

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEWEY BAGLEY
700 N. 43rd Street
Philadelphia, PA 19104,

DEWEY MCNAIR
700 N.43rd Street
Philadelphia, PA 19104

BOTTOM OF THE SEA, INC.
700 N. 43rd Street
Philadelphia, PA 19104

Plaintiffs,

v.

CLYDE VANEL,
260 W. 35th Street
New York, NY 10001,

KEVIN ROBERTS
714 South Street
Philadelphia, PA 19147,

SOUTH STREET SEAFOOD, LLC
714 South Street
Philadelphia, PA 19147

Defendants

Civil Action No.: _____

VERIFIED COMPLAINT

Plaintiffs Dewey Bagley, Dewey McNair and Bottom of the Sea, Inc., by their undersigned attorney, brings this civil trademark infringement action to obtain a temporary restraining order and/or preliminary injunction, and equitable and other relief against Defendants South Street Seafood, LLC, Clyde Vanel and Kevin Roberts upon

actual knowledge with respect to themselves and their own acts and upon information and belief as to all other matters. Plaintiffs allege as follows:

NATURE OF THE ACTION

1. This is an action for trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. § 1051, et. seq., as well as unfair and deceptive acts under 73 P.S. §201-1. et seq., and trademark infringement under the common law of Pennsylvania.
2. Plaintiffs bring this action seeking equitable relief and damages due to Defendants' impermissible use of Plaintiffs' mark to advertise and solicit business thereby violating the Plaintiffs' valuable trademark rights.

JURISDICTION AND VENUE

3. The action arises under the federal Trademark Act, 15 U.S.C. § 1051, et seq. for trademark infringement and unfair competition. Petitioners also assert claims for trademark infringement and for unfair methods of competition and unfair or deceptive trade practices in the conduct of any trade or commerce under the laws of the Commonwealth of Pennsylvania, both statutory and common law.
4. The court has subject matter jurisdiction to adjudicate the claim in this complaint under 28 U.S.C. §1331 and §1343(a).
5. The District of Pennsylvania is the proper venue for this case under 28 U.S.C. §1391(b) since Defendants are residents of Pennsylvania, own and operate a business in the state of Pennsylvania, and the facts that form the basis of this complaint are all based in this district.
6. Bottom of the Sea is a corporation owned and operated by Dewey Bagley and

Dewey McNair that is incorporated in Pennsylvania. The mark Bottom of the Sea is a registered trademark owned by Dewey McNair. A true and correct copy of the certificate of registration is attached as Exhibit A. Bottom of the Sea is located at 700 North 43rd Street, Philadelphia, PA.

7. Defendants Clyde Vanel and Kevin Roberts (Defendants) are the owners and operators of South Street Seafood.

8. Under federal copyright law, it is illegal to use a mark that is copyrighted, without permission of the owner of the mark. 15 U.S.C. §1114.

PARTIES

9. Plaintiff Bottom of the Se, Inc. is a Pennsylvania corporation with it principal place of business in the City and County of Philadelphia.

10. Plaintiff Dewey McNair, an individual, is the founder and general manager of Bottom of the Sea, Inc.

11. Plaintiff Dewey Bagley, an individual, is the owner of Bottom of the Sea, Inc.

12. Defendant South Street Seafood, LLC is a Pennsylvania corporation with its principal place of business in the City and County of Philadelphia.

13. Defendant Clyde Vanel, an individual, is an owner, operator and officer of South Street Seafood, LLC.

14. Defendant Kevin Roberts, an individual, is an owner, operator and officer of South Street Seafood, LLC.

FACTS

15. Plaintiffs are the sole owner of Bottom of the Sea, Inc. mark.

16. Plaintiffs' major corporate purpose is to operate a seafood restaurant.

17. Plaintiffs' mark has become well known in the Philadelphia area. The mark is used to advertise, promote and seek business opportunities in the greater Philadelphia area. Plaintiffs have never granted permission to anyone for the use of the mark.

18. Plaintiffs applied and were granted a trademark by the United States Patent and Trademark Office on November 23, 2004. (Exhibit A)

19. The Defendants' unauthorized use of the mark has been ongoing since on or about June of 2008. The Defendants' have used the mark Bottom of the Sea to advertise, promote and to seek business opportunities in the greater Philadelphia area in direct competition with Mr. Bagley's and Mr. McNair's Bottom of the Sea, Inc.

20. Plaintiffs made multiple verbal requests over a period of several months that the Defendants cease and desist the use of the mark. Defendants verbally agreed to comply but Plaintiff later discovered the illegal use of its mark was ongoing. Subsequently, Plaintiffs mad written request to cease and desist. The Defendants have refused to cease and desist their infringing activities.

21. Plaintiffs have invested money and time to protect their mark and to build it into a recognizable name and viable business. The Defendants' unauthorized use of the mark represents flagrant abuse of the Plaintiffs' trademark rights.

**FIRST CLAIM FOR RELIEF TRADEMARK INFRINGEMENT AND UNFAIR
COMPETITION UNDER SECTION 43(A) OF THE LANHAM ACT, 15 U.S.C.
§1125(A)(1)**

22. The Act defines infringement as the unauthorized "use in commerce any

reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods for services on or in connection with which such use is likely to cause confusion... shall be liable in a civil action by the registrant.” 15 U.S.C. § 1114.

23. Based on the aforementioned facts, the Defendants’ use of the mark qualifies as trademark and/or copyright infringement under the Act. As a result, the Defendants must comply with the federal regulations governing the protection and use of trademark and copyrighted property.

24. It is trademark and copyright infringement to use the mark, Bottom of the Sea, Inc., to advertise and solicit business without the authorization of Petitioners, who have suffered and will continue to suffer irreparable injury and damages as a result of the Defendants’ acts.

**SECOND CLAIM FOR RELIEF DECEPTIVE AND UNFAIR BUSINESS
PRACTICES UNDER 73 P.S. §§201-1, et seq.**

25. The acts, conduct, and practices of Defendants described, above constitute deceptive and unfair business practices in violation of 73 P.S. §201, et seq.

26. Defendants are persons engaged in the conduct of trade or commerce within the meaning of 73 P.S. §201, et seq.

27. As a result of the actions, conduct or practices of Defendants alleged above, Petitioners have suffered, and will continue to suffer, irreparable injury or damages.

**THIRD CLAIM FOR RELIEF TRADEMARK INFRINGEMENT UNDER 54 Pa.
C.S.A. §1101, et. seq.**

28. The willful and deliberate acts of the Defendants are likely to cause confusion with respect to Plaintiffs' Bottom of the Sea mark for the same or similar goods and services, and thus constitute trademark infringement of Petitioners' Bottom of the Sea mark under the common law of Pennsylvania, 54 Pa. C.S.A. § 1101, et seq.

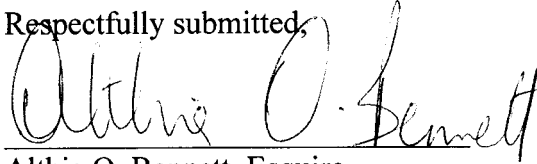
29. As a result of the actions, conduct or practices of Defendants alleged above, Plaintiffs have suffered, and will continue to suffer, irreparable injury or damages.

PRAYER FOR RELIEF

30. WHEREFORE, PLAINTIFFS pray the court to issue:

- (1) A preliminary and/or temporary injunction enjoining Defendants from using Bottom of the Sea mark, or any confusingly similar marks, to advertise, promote, distribute, or use in any manner in connection with any product or business.
- (2) An award granting Plaintiffs monetary relief including damages, Defendant's profits, attorney's fees and the cost of this action pursuant to 15 U.S.C. §1117, 73 P.S. §201-4.1 and other applicable laws.
- (3) Grant Plaintiffs such other relief as may be just and equitable.

Respectfully submitted,

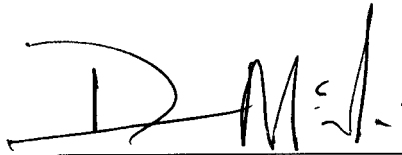
A handwritten signature in black ink, appearing to read "Althia O. Bennett". The signature is written in a cursive style with a horizontal line underneath the name.

Althia O. Bennett, Esquire
Bennett, Walker & Associates, LLC
100 South Broad Street
Suite 2130
Philadelphia, PA 19110
215-564-1400 – Telephone
215-564-1414 - Fax

VERIFICATION

I, Dewey McNair declare as follows:

1. I am the Founder and General Manager of Bottom of the Sea, having served in that capacity since 2004.
2. I have personal knowledge of the facts about Bottom of the Sea and its activities set forth in the foregoing *Complaint* and if called on to testify as to these matters would do so competently.
3. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'D. McNair', is written over a horizontal line.

Dewey McNair

Dated: 8/13/2009


Certificate of Service

I certify that on August _____ 2009, the foregoing document was provided in paper format by certified mail and regular mail to the following:

Clyde Vanel
260 W. 35th Street
New York, NY 10001

Kevin Roberts
714 South Street
Philadelphia, PA 19147

South Street Seafood, Inc.
714 South Street
Philadelphia, PA 19147

A handwritten signature in black ink, appearing to read "Althia O. Bennett", written over a horizontal line.

Althia O. Bennett
Bennett, Walker & Associates

EXHIBIT A

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

To avoid CANCELLATION of the registration, the owner of the registration must submit a declaration of continued use or excusable non-use between the fifth and sixth years after the registration date. (See next page for more information.) Assuming such a declaration is properly filed, the registration will remain in force for ten (10) years, unless terminated by an order of the Commissioner for Trademarks or a federal court. (See next page for information on maintenance requirements for successive ten-year periods.)



Jon W. Dudas

Director of the United States Patent and Trademark Office

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

Reg. No. 2,904,598

United States Patent and Trademark Office

Registered Nov. 23, 2004

SERVICE MARK
PRINCIPAL REGISTER

BOTTOM OF THE SEA

BOTTOM OF THE SEA, INC. (PENNSYLVANIA
CORPORATION)
700 NORTH 43RD STREET
PHILADELPHIA, PA 19104

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "SEA", APART FROM THE MARK
AS SHOWN.

FOR: RESTAURANT SERVICES, NAMELY PRO-
VIDING FOOD AND DRINK, IN CLASS 43 (U.S. CLS.
100 AND 101).

SER. NO. 76-564,030, FILED 12-8-2003.

FIRST USE 9-1-2001; IN COMMERCE 9-30-2001.

RAUL CORDOVA, EXAMINING ATTORNEY

EXHIBIT B

Bennett, Walker & Associates, LLC

Attorneys At Law
100 South Broad Street, Suite 2130
Philadelphia, PA 19110
215-564-1400 (Phone)
215-564-1414 (Fax)

Althia O. Bennett, Esquire
Jeremy M. Walker, Esquire
(Barred in PA & NJ Bars)

Shariff Street, Esquire*
*Of Counsel

March 11, 2009

Re: Bottom of the Sea Copy Write and Trade Mark Infringements

To:
Kevin Roberts
South Street Seafood
714 South Street
Philadelphia PA 19147

Clyde Vanel, Esquire
260 W. 35Th St.
New York, New York, 10001
clydevanel@vanellaw.com

Please be advised that the use of the name "Bottom of the Sea" at 714 South St. is a violation of my client's copy write and trade mark. Its is hereby requested that you cease any further use of the name Bottom of the Sea at the aforementioned location; this includes but is not limited to the use of such name and trade mark on any signage, marketing materials or paraphernalia connected with the aforementioned establishment. If you have any questions I can be reached at 267 481-2186, or 267 276-5224; email sharifstreet@gmail.com

Sincerely,

Sharif Street, Esq.

cc: Dewey McNair